



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0016

JOHN ELIAS BALDACCI
GOVERNOR

DAVID A. COLE
COMMISSIONER

November 6, 2006
Subject: **LOA Passenger/Car Ferry Vessel**
Project No: FBD-1168(100)X
Pin: 11681.00
Amendment No. 7

Dear Sir/Ms:

Make the following changes to the bid documents.

In the bid book, within Section 4 "Vessel Construction Agreement" REMOVE in their entirety the following Articles:

- 1-General Statement of Work
- 8-Inspection of Work and Approval of Plans
- 12-Tests and Trials
- 13-Post-Trial Inspection
- 17-Guaranty
- 19-Payment of Contract Price
- 21-Liquidated Damages
- 22-Default of Contractor
- 23-Termination for Convenience of Owner
- 26-Performance and Payment Bonds
- 30-Liens
- 32-Patent Infringement
- 43-Other Governmental Requirements

REPLACE the above Articles with the attached updated Articles.

Within Section 4 "Vessel Construction Agreement" under Article 24-Disputes, ADD the following clause to the end of the Article:

I. Judicial Review The Contractor must comply with all notice provisions and with the specifications of ARTICLE 24 – DISPUTES in order to pursue judicial review of the Commissioner's decision. The Contractor agrees that any judicial review of any claim or cause of action arising from this Contract must be commenced in the Superior Court of Maine, Kennebec County. Any petition for review must be in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §11001, et seq. and Rule 80C of the Maine Rules of Civil Procedure. Make this change in pen and ink.



PRINTED ON RECYCLED PAPER

In the bid book, within Section 4 "Vessel Construction Agreement" under Article 44-Entire Agreement CHANGE the Article number from Article 44 to Article 45. Make this change in pen and ink.

ADD the attached Article 44-Mutual Waiver of Consequential Damages.

Consider these changes prior to submitting your bid on November 15, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Bickford", written in a cursive style.

Scott Bickford
Contracts & Specifications Engineer

ARTICLE 1 – GENERAL STATEMENT OF WORK

A. Contractor shall furnish all plant facilities, labor, material and equipment, and shall perform all work necessary to construct, launch, outfit, test and deliver the Vessel, at Contractor's own risk and expense, in strict accordance and compliance with this Agreement except as otherwise provided. Contractor's performance shall include, but not be limited to, the development of additional plans, sketches and technical data ("Contractor-provided Designs") which are necessary to construct the Vessel in a seaworthy manner but which are not specifically set forth in the Plans and Specifications. Contractor shall also be responsible for the receipt, storage and installation of outfitting and equipment required pursuant to this Agreement. Performance of all work set forth herein shall be for the consideration of the Contract Price. Owner shall be responsible for designs, Plans, Specifications and other information provided by Owner (Owner-provided Plans). Contractor shall bear no responsibility or liability for defects or deficiencies in Owner-provided Plans. The Contractor shall bear responsibility and liability for any defects or deficiencies in material, equipment, workmanship and Contractor-provided Designs.

B. The Vessel shall be identified as Contractor's hull number ____ and shall be constructed at Contractor's plant or shipyard (hereafter "Shipyard"), located at _____, in the State of _____.
The Vessel when completed, after passing all requisite tests and trials, shall be delivered to Owner at the Rockland Ferry Terminal in Rockland, Maine pursuant to Article 14 (Delivery of Vessel) and Article 16 ("Contract Delivery Date").

C. The work to be performed shall be commenced immediately, prosecuted with due diligence and completed, and the delivery of the Vessel, in all respects complying with the terms and conditions of this Agreement and the Plans and Specifications, shall be made on or before the Contract Delivery Date, as may be extended in accordance with the terms hereof..

ARTICLE 8 – INSPECTION OF WORK AND APPROVAL OF PLANS

A. All material, equipment and workmanship relative to the construction of the Vessel and Contractor's facilities shall be subject to inspection by Owner, the Owner's Representative or any governmental entity at any and all reasonable times during the performance of the work called for by this Agreement.

B. All working drawings, shop drawings, blueprints, samples, working plans, progress photographs, progress reports, production schedules and other documentation required to be submitted in the Plans and Specifications shall be submitted to Owner or the Owner's Representative by Contractor. Owner or the Owner's Representative shall review said documents within seven (7) days for approval. Any work commenced by Contractor before any of said documents have been approved by Owner, the Owner's Representative or any regulatory body shall be at Contractor's risk and expense. Any document submitted by Contractor which is not expressly rejected by Owner within said seven (7) days shall be deemed approved by Owner.

C. Owner or the Owner's Representative shall inspect all material, equipment and workmanship as set forth in the Plans and Specifications to determine whether same conform to the requirements of this Agreement and the Plans and Specifications. Owner or the Owner's Representative shall promptly reject all material, equipment and workmanship found not to be in conformance with the requirements of this Agreement or as otherwise set forth in the Plans and Specifications. All material, equipment and workmanship rejected by Owner or the Owner's Representative shall be corrected, repaired or replaced by Contractor at Contractor's expense to the satisfaction of Owner or the Owner's Representative.

ARTICLE 12 – TESTS AND TRIALS

The Contractor shall as soon as possible after the execution of this Contract submit to the Owner a complete schedule of all tests and trials (the “Schedule of Tests and Trials”) to be carried out on the Vessel before the Vessel is declared to be ready for acceptance by the Owner. The Owner and the Naval Architect shall have the right to reasonably alter, amend, extend or reduce the said Schedule of Tests and Trials to ensure compliance with this Contract and all applicable Governmental Rules, as of the effective date of this Agreement. Upon completion of all construction as set forth in this Agreement and the Plans and Specifications, the Contractor shall perform all tests and trials set forth in the Schedule of Tests and Trials, which shall include as a minimum all of the requirements set forth in Section 1.13 of the Plans and Specifications. All expenses of such tests and trials shall be borne by the Contractor except to the extent that Owner or the Naval Architect alter, amend or extend the Schedule of Tests and Trials beyond what is reasonably required for compliance with the Contract and applicable Governmental Rules or if the applicable Governmental Rules change subsequent to the effective date of this contract.

If, during said tests and trials, the Vessel fails to meet any requirement of the Plans and Specifications or this Agreement, Contractor shall, after taking appropriate corrective action, subject the Vessel to further tests and trials sufficient to demonstrate compliance with this Agreement and the Plans and Specifications. The cost of all such additional tests and trials shall be borne by Contractor.

ARTICLE 13 – POST-TRIAL INSPECTION

After all tests and trials required by this Agreement and the Plans and Specifications have been completed, the Vessel shall be returned to the Shipyard, and in any case where the performance of said Vessel fails to meet any requirement contained in this Agreement and the Plans and Specifications, the Vessel and its equipment shall be opened up for post-trial inspection and examination as required by Owner or the Owner's Representative. All costs of the post-trial inspection shall be borne by Contractor, except to the extent that the Vessel's failure to meet the requirement of this Agreement is due to a defect in the Owner provided design or any owner provided items. Any defect in the material, equipment and workmanship provided by the Contractor; or defects resulting from Contractor-provided Designs shall be remedied by Contractor at its expense, after which the machinery shall be closed and connected ready for service.

ARTICLE 17 – GUARANTY

A. Contractor guarantees to repair or replace to the reasonable satisfaction of Owner any defect in materials, equipment or workmanship provided by Contractor or any defect resulting from Contractor–provided Designs, which is discovered within twelve (12) months after such Vessel is delivered to Owner, provided that Owner shall within thirty (30) calendar days after discovery of such defect, provide written notice of claim for said defect to Contractor. The Contract requirement of 12 months governs. Owner’s failure to timely provide written notice of any defect to Contractor shall constitute a waiver of any and all claims arising out of such defect. With respect to Contractor’s guaranty as set forth in this Article, the term “defect” shall not include defects resulting from design of the Vessel provided by the Owner in the Plans and Specifications or the following which may result from use of the Vessel during said guaranty period: (1) ordinary wear and tear; (2) misuse; (3) improper stowage or loading; and (4) negligence of Owner, its agents or employees or the operator or crew of the Vessel.

B. The liability of the Contractor to the Owner hereunder on account of defects shall include the actual repair or replacement thereof. Any work required to be performed pursuant to the provisions of this Section shall be carried out, if practicable, at the shipyard of the Contractor or by the Contractor’s own personnel at the Vessel’s home port, or at a shipyard of the Contractor’s choosing. If this causes undue delays or is not practical in Owner’s sole discretion, then the Owner may have such work performed at any shipyard and in that event the Contractor shall be liable to the Owner for the documented expenses thereof at the commercial rate prevailing in such port area, including the cost of dockage of the Vessel, if necessary, with regard to the repair or correction of any defective workmanship or defective material, guaranteed hereunder. Contractor shall guarantee such repair or replacement for an additional period of ninety (90) days from the completion of such repair or replacement, unless such repair and replacement shall occur more than ninety (90) days prior to the expiration of the twelve (12) month guarantee period, in which case such repair or replacement shall be guaranteed until the end of said twelve (12) month period

C. Prior to the expiration of the guaranty period, a final guaranty survey of the Vessel shall be conducted by Owner or the Owner’s Representative. At such survey, Owner or the Owner’s Representative shall inspect the Vessel for any defects. Such survey shall be held at such port as Owner shall designate. All material, equipment and workmanship guaranteed hereunder, which are found to be defective as a result of said inspection shall be corrected, repaired or replaced by Contractor at its expense to the reasonable satisfaction of Owner or the Owner’s Representative. All corrections, repairs or replacements to be made pursuant to said final guaranty survey shall be performed as set forth in Section B of this Article. Owner shall give seven (7) calendar days prior written notice to Contractor of the time and place of the final guaranty survey, and shall give Contractor an opportunity to have a representative present during the survey.

D. Any guaranties from subcontractors to Contractor in excess of the guaranty provisions of this Article shall be assigned by Contractor to Owner at the end of the guaranty period.

E. The remedies contained in this Article 17 shall be Owner's sole and exclusive remedies for defects after delivery, whether under tort, contract, warranty or otherwise and no other guaranties or warranties, whether expressed or implied by law or otherwise are or will be deemed to have been made by contractor. All implied warranties, including warranties of merchantability or fitness for ordinary or intended use are specifically excluded. This guaranty is given in lieu of all other guaranties or warranties or actions in tort (including negligence or strict liability) or contract against contractor. In no event shall contractor's aggregate liability (whether in warranty, tort or contract) exceed the contract price. In no event shall contractor be liable to owner for any incidental, punitive or consequential damages, including but not limited to, loss of use or loss of profits. Notwithstanding any provision contained herein, the Contractor shall remain liable for Liquidated Damages.

ARTICLE 19 – PAYMENT OF CONTRACT PRICE

This Article shall govern the payments for construction of the Vessel.

A. The Contract Price is payable as follows:

1. Fifteen percent (15%) of the Contract Price at the time that seventy-five percent (75%) of the structural steel is received in the shipyard.
2. Five percent (5%) of the Contract Price at the time of the keel laying.
3. Fifteen percent (15%) of the Contract Price at the time of installation of the main engines.
4. Fifteen percent (15%) of the Contract Price at the time of completion of the hull to the main deck.
5. Twenty percent (20%) of the Contract Price at the time of completion of the deck house.
6. Ten percent (10%) of the Contract Price at the time of launching of the Vessel.
7. Ten percent (10%) of the Contract Price at the time of delivery of the Vessel to Owner.
8. Five percent (5%) of the Contract Price upon submittal by the Contractor to the Owner of all plans, reproducibles, subcontractors' instruction books and all other data required to be so submitted to the Owner by the terms of this Agreement and the Plans and Specifications.
9. Five percent (5%) of the Contract Price at Final Acceptance (In accordance with Article 18) of the Vessel and upon satisfactory completion of the guaranty period and resolution of any other matters set forth in this Agreement.

B. Payment may be made in non-sequential order if the work required therefore is completed. No payments shall be made except on bills, vouchers or invoices submitted in such number or form and executed and attested in such manner as prescribed by Owner with respect to the payments to be made under Section A of this Article. No payment shall be made by Owner to Contractor until Owner is assured by Contractor that no liens upon the Vessel, material or equipment in favor of Contractor's workmen, materialmen are in existence.

C. The making of partial payments pursuant to Section A of this Article shall in no way prevent Owner or the Owner's Representative from asserting any right or remedy accruing to them under this Agreement because of the failure of Contractor to perform the work or deliver the completed Vessel in accordance with the terms of this Agreement.

D. When the Contractor considers that an installment payment is about to fall due, he will give the Owner fourteen (14) days notice thereof. The Contractor will then prepare an invoice, addressed to the Owner, with a copy to the Naval Architect and Owner's Representative who will, on being satisfied that the relevant stage has been reached, certify the same for payment and promptly advise the Owner accordingly. The Owner will settle a certified invoice in full within thirty (30) days of receipt, except that the final payment will be reduced because of any guarantee costs incurred by Owner.

All payments made by the Owner to the Contractor are so made strictly on the condition that all sums due by the Contractor to its suppliers and subcontractors are promptly and fully paid. Owner reserves the right to request executed waivers of liens and other claims of any or all such suppliers and subcontractors as a condition of making any of the required payments.

ARTICLE 21 – LIQUIDATED DAMAGES

In the event Contractor fails to deliver the Vessel on or before the Contract Delivery Date or any extension thereof, Contractor shall pay to Owner as liquidated damages, and not as a penalty, the following amounts for each calendar day or part thereof elapsing from said Contract Delivery Date (In Accordance with Article 16) to the date upon which the Vessel is actually delivered:

- A. Five Hundred Dollars (\$500) for each calendar day for the first 100 days,
- B. One Thousand Dollars (\$1000) for each calendar day for the next 100 days,
- C. One Thousand Five Hundred Dollars (\$1500) thereafter.

The payment of such liquidated damages shall be the sole and exclusive rights or remedies of Owner under this Agreement for late delivery of the Vessel.

These liquidated damages which the parties each believe to be reasonable, are not set as a penalty for the Contractor's breach, should one occur, nor are they intended to be a windfall to the Owner. The amount fixed herein between the parties is a reasonable forecast of the amount necessary to justly compensate the Owner for the loss occasioned by the Contractor's breach of delivery.

ARTICLE 22 – DEFAULT OF CONTRACTOR

A. The following circumstances shall constitute default of Contractor under this Agreement:

1. The failure of Contractor to make delivery of the Vessel and its materials, fittings, equipment and supplies, and failure to perform the services required under this Agreement within the time specified herein or any extension thereof;

2. The failure of Contractor to perform any of the other provisions of this Agreement or failure to make progress such that performance in accordance with its terms is endangered. Such failure may include, but is not limited to, failure to make timely payment for all labor, materials, services and other charges which are to be paid by Contractor;

3. The dissolution of Contractor or the adjudication of Contractor as a bankrupt; the making of a general assignment by Contractor for the benefit of creditors; the appointment of a receiver of any kind whatsoever, temporary or permanent, for the property of Contractor; or the filing of a petition for reorganization with reference to Contractor, whether by Contractor, its creditors, stockholders or any other person whatsoever; or

B. Where the failure of Contractor to comply with the provisions of this Agreement arises out of Acts of God or other events beyond the control of Contractor as contained in Article 22, Section A above, such failure shall not be considered default under this Article.

C. In the event of default by Contractor as defined in Section A of this Article, Owner may terminate this Agreement in whole or in part. Upon such termination, Owner shall give written Notice of Default to Contractor. Owner shall give Contractor fifteen (15) calendar days from the receipt of such Notice the opportunity to cure only such failure as set forth in Section A (2) of this Article in a manner satisfactory to Owner.

D. In the event that Owner terminates this Agreement in whole or in part as provided in Section C of this Article, Owner may procure the Vessel, supplies or services similar to those terminated. Contractor shall be liable to Owner for any reasonable and documented costs for such similar Vessel, supplies or services which are in excess of the Contract Price or that portion of the Contract Price attributable to the part of the contract work performed by one other than Contractor. Contractor shall continue to perform the contract work to the extent said work is not terminated pursuant to this Article.

E. If this Agreement is terminated by Owner under this Article, Owner may require Contractor to transfer title (insofar as not previously transferred) and deliver to Owner, in the manner and to the extent directed by Owner, the completed Vessel or the Vessel as partially completed and all supplies, materials, spare parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights as Contractor has constructed,

produced or acquired for the portion of this Agreement subject to termination. Owner shall require Contractor to protect and preserve property in possession of Contractor in which Owner has an interest. Owner shall pay to Contractor an amount commensurate with Contract Price, less the contract value of the terminated work, less all previous payments made under Article 19 (Payment of Contract Price), and

(2) an amount to be agreed upon by Contractor and Owner for the protection and preservation of property.

F. In the event Owner terminates this Agreement under this Article and elects to have the contract work completed by another, Contractor shall, at Owner's direction, assign such subcontracts and orders for materials, equipment, services and supplies to be used in the performance of said contract work to Owner.

G. In the event that Owner terminates this Agreement under this Article and elects not to have the contract work completed, Owner may, within one hundred twenty (120) calendar days from the date of termination, sell the partially completed Vessel, work-in-process, materials, machinery, fittings, equipment and supplies to which Owner has title, together with all plans, specifications, calculations and other records required for the contract work. Such sale shall be made free from any equity of redemption and may occur without any appraisal or valuation at the option of Owner. The purchaser at such sale shall be given reasonable time, not to exceed forty-five (45) days, within which to remove the Vessel and other property purchased from the plant of Contractor. Owner may become a purchaser at such sale. The proceeds of the sale shall be applied in the following order of priority: first, to satisfy all costs and expenses, including reasonable attorneys fees incurred by Owner or its assigns in making such sale; second, to reimburse Owner for payments already made by Owner to Contractor; and third, to pay damages, demands or deficiencies arising by reason of the default of Contractor. The remaining proceeds, if any, shall be paid over to Contractor. In the event that the proceeds of such sale are not sufficient to pay the above priority items, the Contractor or its surety or sureties shall pay Owner all such deficiencies.

H. The rights conferred upon Owner under the terms of this Article shall be in addition to any rights which Owner would have at law or equity upon default of Contractor. The failure of Owner to exercise any rights contained in this Article shall not constitute a waiver of Owner's right to subsequently terminate this Agreement as set forth in Article 23 (Termination for Convenience of Owner).

ARTICLE 23 – TERMINATION FOR CONVENIENCE OF OWNER

Notwithstanding Article 22 (Default of Contractor) of this Agreement:

A. Performance of work under this Agreement may be terminated by Owner in whole or in part whenever Owner determines for any reason that termination is in the best interest of the State of Maine. Such determination shall not be subject to Article 24 (Disputes). Any such termination shall occur by Owner's delivery to Contractor of a Notice of Termination specifying the extent to which performance of work under this Agreement is terminated and the date on which termination becomes effective. Upon receipt of a Notice of Termination and except as otherwise directed by Owner, Contractor shall:

1. Stop work to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, equipment, services or facilities except as may be necessary for completion of such portion of the work which is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. Assign to Owner all rights, title and interest of Contractor under any orders or subcontracts so terminated, in the manner, at the times and to the extent directed by Owner;
5. Settle all outstanding liabilities and claims arising out of such termination of said orders and subcontracts to the extent that Owner may require and with the approval or ratification of Owner, which shall be final;
6. Transfer title (to the extent that title has not already been transferred to or vested in Owner) and deliver to Owner, in the manner, at the times and to the extent directed by Owner the following:
 - a. the fabricated or unfabricated parts, work-in-process, completed work, supplies and other material produced as a part of or acquired in connection with the performance of the work terminated by the Notice of Termination; and
 - b. the completed or partially completed plans, drawings, information and other property which, if this Agreement had been completed, would have been required to be furnished to Owner.
7. Use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by Owner, any property of the types referred to in Section A(6) of this Article; provided, however, that Contractor:

- a. shall not be required to extend credit to any purchaser; and
- b. may purchase any such property under the conditions prescribed by and at the price or prices approved by Owner.

8. Take such action as may be necessary, or as Owner may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Contractor and which Owner has acquired or may acquire an interest. Within sixty (60) calendar days of receipt of the Notice of Termination, Contractor shall submit to Owner a list, certified as to quantity and quality, of any or all items not previously disposed of, exclusive of items the disposition of which has been directed or authorized by Owner, and may request that Owner remove or enter into a storage agreement for such items. Within forty-five (45) calendar days of receipt of such list, Owner shall remove or enter into a storage agreement for said items. The list submitted shall be subject to verification by Owner upon removal of the items. If the items are stored, such verification shall occur within thirty (30) calendar days from the date of the storage agreement. Any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

B. After receipt of a Notice of Termination, Contractor shall submit to Owner in writing its final claim for any and all amounts that the contractor asserts are due under the Contract, in the form and with the certification if any is prescribed by Owner. Such claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless extended in writing by Owner within such one (1) year period or any authorized extension thereof. However, Owner may determine that facts justify receipt of such final claim at any time after such one (1) year period or any extension thereof. Upon failure of Contractor to submit its final claim within the time allowed, Owner may determine, on the basis of information available to it, the amount that is due and shall thereupon pay to Contractor said amount.

C. Contractor and Owner may agree upon any or all amounts to be paid to Contractor by reason of the total or partial termination of work pursuant to this Article, which may include a reasonable allowance for profit on work done. Such agreement shall be memorialized in a written amendment to this Agreement. The parties may stipulate that this Agreement constitutes a full and final settlement of all amounts owed under this Agreement.

D. In the event of the failure of Contractor and Owner to agree as provided in Section C of this Article on the amount to be paid Contractor, Owner shall determine the amount, if any, due Contractor based upon the following:

1. For completed contract work accepted by Owner (or sold or acquired as provided in Section A (7) of this Article) and not paid for, a sum equivalent to the aggregate price for such contract work computed in accordance with this Agreement;

2. The total of:

a. the costs incurred in the performance of the contract work terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to contract work paid or to be paid for under Section D (1) of this Article; and

b. the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in Section A (5) of this Article, which are properly chargeable to the terminated portion of this Agreement, but exclusive of amounts paid or payable on account of contract work or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amount shall be included in the costs payable under Section 2 (a) of this Article; and

c. The reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of this Agreement and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to this Agreement.

3. The total sum to be paid Contractor under Sections D(1) and D(2) of this Article shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work not terminated. Except for normal spoilage, and except to the extent that Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor as provided in Sections D(1) and D(2)(a) of this Article, the fair value, as determined by Owner, in connection with materials, equipment, fittings and supplies which are destroyed, lost, stolen or damaged so as to become undeliverable to Owner or to a buyer pursuant to Section A(7) of this Article.

F. In arriving at the amount due Contractor under this Article, there shall be deducted:

1. all advances or other payments on account made to Contractor,
2. any liquidated or finally determined claim which Owner may have against Contractor in connection with this Agreement, and
3. the agreed price for or the proceeds from sale of any materials, equipment, supplies or other items acquired by Contractor or sold pursuant to the provisions of this Article and not otherwise recovered by or credited to Owner.

G. If the contract work is partially terminated, Contractor may file with Owner a request in writing for an equitable adjustment of the Contract Price relating to the non-terminated portion of this Agreement prior to the settlement of the terminated work.

H. Owner may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs set forth in Sections 2(a) and 2(b) of this Article whenever, in the opinion of Owner, Contractor is entitled to such payments. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by Contractor to Owner upon demand.

I. Contractor shall preserve and make available to Owner all books, records, documents and other evidence bearing on the costs and expenses of Contractor under this Agreement and relating to the work terminated hereunder pursuant to Article 40 (Compliance with Laws)

ARTICLE 26 – PERFORMANCE AND PAYMENT BONDS

A. Contractor agrees to furnish Owner, before the execution of this Agreement, the following bonds upon which Contractor and its surety or sureties are jointly and severally bound to Owner. The form and sufficiency of the surety or sureties shall be satisfactory to Owner.

1. A performance bond in the sum of 100 % of the Bid amount conditioned upon the well and true performance and fulfillment of all undertakings, covenants, terms, conditions and provisions of this Agreement during its original term and any extensions, amendments or modifications thereof that may be granted by Owner or the Owner's Representative, with or without notice to the surety and during the life of any guaranty required under this Agreement.

2. A payment bond in the sum of 100 % of the Bid amount conditioned upon Contractor making prompt payment to all persons supplying labor, materials, equipment and supplies in the performance of the work provided for in this Agreement during its original term and any extensions, amendments or modifications thereof that may be granted by Owner or the Owner's Representative, with or without notice to the surety, subject to §115e of Part II of the FTA Grants.

B. If any surety upon any bond furnished under this Article becomes unacceptable to Owner or if any surety fails to furnish information as to its financial condition from time to time as required by Owner, Contractor shall promptly furnish such additional security as may be required by Owner to protect the interests of Owner and of persons supplying Contractor or its subcontractors of any tier with labor, materials, equipment or supplies in the performance of the work covered by this Agreement.

ARTICLE 30 – LIENS

A. At the time Contractor requests any payment under this Agreement, Contractor must give written guaranty to Owner that the Vessel, its materials, equipment, fittings and supplies and every part thereof is free and clear of any and all liens or rights in rem of any kind, except such liens in rem arising as a result of Owner's other contractors, suppliers and materialmen, or arising as a result of Owner's default in payment to Contractor. Contractor shall furnish evidence satisfactory to Owner that the Vessel, materials, equipment, fittings and supplies are free and clear of such liens or rights in rem.

B. If such a lien or right in rem as Contractor is required to guaranty against hereunder is filed or asserted against or attached upon the Vessel, any materials, equipment, fittings or supplies, Contractor shall promptly notify Owner of such lien or right in rem and shall no later than fifteen (15) calendar days thereafter secure the discharge or release of such lien or right in rem. If such release or discharge is not available under the law, Contractor shall immediately take such steps as in the opinion of Owner shall prevent such lien or right in rem from delaying the contract work, and shall indemnify and hold harmless Owner from all costs, charges and damages by reason of such lien or right in rem.

C. Owner, at its option, may satisfy the claim upon which such lien or right in rem as Contractor is required to guaranty against hereunder is based in order to secure its discharge or release. In such event, Owner shall deduct such sum from any payments due or to become due Contractor. In the event that the cost of satisfying such lien or right in rem is in excess of the amount which is due or to become due Contractor, Contractor shall pay the amount of such excess to Owner upon demand.

D. Owner may also, at its option, without securing the discharge or release of such lien or right in rem as provided in paragraph C above, withhold any payments due or to become due Contractor in an amount which is determined by Owner to be required to secure the release or discharge of such lien or right in rem, which amount shall include the estimated amount of all expenses reasonably expected to be incurred by Owner in connection therewith; provided, however, that Contractor has not released or discharged such lien or right in rem.

ARTICLE 32 – PATENT INFRINGEMENT

Contractor shall be responsible for any and all claims against Owner or Vessel for infringement of patents or patent rights in the construction or use of the Vessel arising out of Contractor's workmanship, materials, equipment and Contractor-provided Designs. Contractor shall defend, hold harmless and indemnify Owner, the Owner's Representative and the Vessel against all such patent claims and all costs, expenses, charges and damages which Owner, the Owner's Representative or the Vessel may be obligated to pay by reason of such patent claims, including all expenses of litigation and reasonable attorney's fees. Owner shall notify Contractor promptly of any patent claim or any suit brought in connection therewith, and shall give Contractor an opportunity to defend against such suit. Owner shall make no payment on account of any patent claim or suit in connection therewith, unless either with the consent of Contractor or pursuant to the decree of a proper court or tribunal. Contractor shall not be responsible for any patent claim or claim for indemnity arising in connection therewith, which arises out of or in connection with the design of the Vessel or any Owner-provided Plans.

The Contractor shall pay all royalties on patented articles, import duty, and other taxes.

ARTICLE 43 – OTHER GOVERNMENTAL REQUIREMENTS

A. The Vessel, with its inventory, equipment and machinery, shall be built strictly in accordance with all applicable statutes, rules, and regulations (and directives issued pursuant thereto) of the United States Government and all agencies of the United States, including but not limited to the United States Department of Transportation (“DOT”), the Federal Transit Administration (“FTA”), the Federal Highway Administration (“FHWA”), the United States Coast Guard, and all successor agencies, and in accordance with the requirements of applicable Federal Acquisition Regulations, set forth or referenced in this agreement, including the Appendices (collectively the “Governmental Rules”).

B. Without limiting the previous subparagraph, attached as Appendix D is (i) a listing of certain Governmental Rules with which Contractor (and all of its sub-contractors, independent contractors, suppliers, and vendors) must comply, together with (ii) a brief summary of each such Governmental Rule. Contractor agrees that such summaries are for reference only and that Contractor will be responsible for informing itself fully about each such Governmental Rule. Contractor agrees (for itself and for all of its sub-contractors, independent contractors, suppliers, and vendors) that it (and each of them) will strictly comply with each such Governmental Rule.

i. For the purpose of meeting the Disadvantaged Business Enterprise ("DBE") requirements of 49 CFR Part 23, Owner has established a goal of **8 %** utilization (of total contract amount) of Disadvantaged/Women Business Enterprises (“D/WBE”). Contractor is required to demonstrate good faith effort to achieve the goal (APPENDIX F).

ii. Notwithstanding the requirements of APPENDIX D, Owner has been granted an exemption/suspension of the provisions of the Davis-Bacon Act relating to minimum wages to be paid to the classifications of work required for construction of the Vessel. The contractor must pay at the very least the Federal minimum wage rate, submit weekly certified payroll statements, and comply with all other Department of Labor laws.

C. In the event of the Contractor’s noncompliance with the provisions of this Contract relating to Governmental Rules, the Owner shall impose such Contract sanctions as it or the relevant governmental agency may determine to be appropriate, including, but not limited to:

i. Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or

ii. Cancellation, termination, or suspension of the Contract, in whole or in part.

D. The Contractor shall include the provisions of this Section in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Governmental Rules. The Contractor shall take such action with respect to any subcontract or procurement as the Owner or any governmental agency may direct as a

means of enforcing such provisions including sanctions; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

E. Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

F. Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Parts 89, 92) which prohibit the use under non-exempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to the Federal Transit Administration ("FTA") and to the US EPA Assistant Administrator for Enforcement (ENO329). Contractor shall include this provision in all subcontracts in excess of \$100,000.

F. The Contractor shall erect at the site of construction, and maintain during construction, signs satisfactory to the relevant governmental agencies identifying the Project and indicating that the Government is participating in the development of the Project.

G. The Contractor and all sub-contractors, independent contractors, suppliers, and vendors shall, on Owner's request, submit evidence to the Owner that the governing air pollution criteria will be met. This evidence and related documents will be retained by the Contractor for on-site examination by relevant governmental agencies.

H. Contractor recognizes and acknowledges that Owner is financing the construction of the Vessel in large part through a grant from an agency of the federal government and that therefore the Owner and the terms of this Contract are subject to all applicable regulations and requirements of that agency, including but not limited to the "Federal Transportation Administration Agreement", Part II, Terms and Conditions, form FTA F 5K, revised 5/89. Contractor agrees to be bound by all such regulations and requirements applicable to contractors and to fully cooperate with and assist Owner in fulfilling its obligations under such regulations and requirements.

ARTICLE 44 – MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

In no event shall Contractor or Owner be liable to the other party, whether arising in tort, contract or otherwise, for incidental, punitive or consequential damages, including without limitation loss of profit, loss of use or loss of hire. Further, in no event shall Contractor be entitled to recover more than the Contract Amount. No payments due the Contractor will be adjusted for inflation and no interest shall be due and payable on any payment due the Contractor, including payments that relate to issues, disputes or claims.